

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

Pierre Richard Augustin, Private Attorney General, Ex Rel )  
Consumer Creditor )

V. )

IN RE NEW CENTURY TRS HOLDING )  
IN RE NEW CENTURY LIQUIDATING TRUST )  
Debtor )

KJC  
No. 07-10416

CLERK  
U.S. BANKRUPTCY COURT  
DISTRICT OF DELAWARE

2009 SEP -9 AM 9:44

FILED

EMERGENCY NOTICE OF APPEAL

Notice is hereby given to the Trust regarding to the Order in Re: Docket Nos. 9757 & 9736 for An  
Emergency Writ.

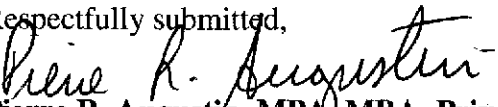
**Issues to be presented**

1. Whether under the Notes of Advisory Committee for Rule 36 Subdivision(e) the Trust is obligated to supplement responses to formal discovery request?
2. Whether Rule 37(a)(3)(A)-(B) allows Consumer Creditor to move to compel discovery when another party has failed to properly answer discovery request or fail to produce documents pursuant to a discovery request?
3. Whether the rule governing requests for admissions requires the Trust to make a reasonable inquiry and effort to secure information that is readily available from persons and documents within the Trust's relative control?

**Designation of the record**

All related motions and transcript of hearing pertaining to the discovery matters

Respectfully submitted,

  
**Pierre R. Augustin, MPA, MBA, Private Attorney General, Ex Rel**  
Consumer Creditor, 3941 Persimmon Drive, #102  
Fairfax, VA 22031 | 617.202.8069 | 703.584.5998

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re: : Chapter 11  
:   
NEW CENTURY TRS HOLDINGS, INC., : Case No. 07-10416 (KJC)  
a Delaware corporation, et al., : (Jointly Administered)  
:   
Debtors. : Re: Docket Nos. 9757 & 9736

**ORDER DENYING PIERRE AUGUSTIN'S EMERGENCY MOTION TO COMPEL  
REVISED ANSWERS AND PRODUCTION OF DOCUMENTS AND EMERGENCY  
REQUEST TO OBTAIN INFORMATION FROM THE COMPEL ORDER**

Upon consideration of the *Emergency Request to Obtain Information From the Compel Order for the Trust to Answer the Questions Except the Production of the Promissory Note* ("July Motion to Compel") (Dkt. No. 9736) and the *Objections to Trust Discovery Responses & Emergency Motion to Compel Revised Answers & Production of Documents to Discovery Questions & Judicial Notice of Modern Money Mechanics Publication* ("August Motion to Compel") (Dkt. No. 9757); and upon consideration any responses or objections thereto; and upon consideration of arguments of Mr. Augustin and counsel for the New Century Liquidating Trust (the "Trust") at the August 21, 2009 hearing (the "Hearing") regarding the parties' discovery disputes; and after due deliberation and sufficient cause appearing therefore;

IT IS HEREBY ORDERED THAT:

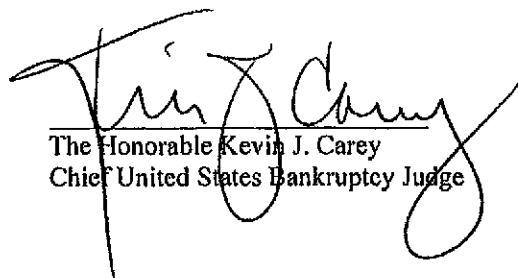
1. The July Motion to Compel is denied for the reasons stated on the record of the Hearing.
2. The August Motion to Compel is denied for the reasons stated on the record of the Hearing. To the extent that the August Motion to Compel included any additional discovery

requests from Mr. Augustin directed to the Trust, such additional discovery requests are hereby quashed as untimely.

3. The Trust is directed to re-serve its responses to Mr. Augustin's discovery request with 5 days of the entry of this Order.

4. The Court shall retain jurisdiction to implement and enforce the terms of this Order.

Dated: August 31, 2009



The Honorable Kevin J. Carey  
Chief United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

---

Pierre Richard Augustin, Private Attorney General, Ex Rel )  
Consumer Creditor )

V. )

IN RE NEW CENTURY TRS HOLDING )  
IN RE NEW CENTURY LIQUIDATING TRUST )  
Debtor )

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No. 07-10416

- I. Emergency Motion To Seek Clarification From The Court  
II. Emergency Motion To Preserve Right Of Appeal  
III. Emergency Motion To Extend Discovery Deadline from 9-15-09 to 10-2-09  
IV. Emergency Motion and Declaration for Leave to Proceed in IFP Status  
V. EMERGENCY MOTION FOR A STAY OF DISCOVERY MATTERS**

Your Honor, here are the factors why Consumer Creditor is seeking a Clarification from the Court:

**I. Emergency Motion To Seek Clarification From The Court**

**1. Fact #1 - Fedex Package Obtained on August 21, 2009**

According to the Fedex Package receipt received from the Trust, it was mailed on the 8/19/2009 and delivered to 3941 Persimmon Drive, #102 on August 20, 2009. I discovered this Fedex package on 8/21/2009 just before the time (9 am) of the past hearing on August 21, 2009. The content of that Fedex package filed at the Court on August 18, 2009 set an objection deadline for August 28, 2009 at 4:00 p.m. and a hearing date for September 4, 2009 at 1:00 p.m. (ET). (see Exhibit #1)

**2. Fact # 2 - Consumer Creditor filed his response vial US Postal Service**

On August 27, 2009, Consumer Creditor mailed his timely objection to the court, before the

expiration of the deadline, and was delivered by the United States Postal Service as follows:

Label/Receipt Number: EH83 1054 725U S

Class: Express Mail®

Status: Delivered

Your item was delivered at 1:51 PM on August 28, 2009 in WILMINGTON, DE 19801. The item was signed for by C ORKIS. Detailed Results:

Delivered, August 28, 2009, 1:51 pm, WILMINGTON, DE 19801

Arrival at Post Office, August 28, 2009, 10:34 am, WILMINGTON, DE 19801

Processed through Sort Facility, August 28, 2009, 9:47 am, WILMINGTON, DE 19850

Processed through Sort Facility, August 28, 2009, 6:34 am, PHILADELPHIA, PA 19176

Processed through Sort Facility, August 27, 2009, 4:52 pm, DULLES, VA 20101

Acceptance, August 27, 2009, 12:26 pm, FAIRFAX, VA 22031

### **3. Fact #3 - Email Received from the Trust**

On Wednesday September 2, 2009, I was informed by the Trust that “no matters scheduled for hearing on Friday” September 4, 2009 at 1:00 p.m. that concern him. During the hearing, neither the Trust nor the Court explicitly explained to Consumer Creditor that this matter was being addressed. If Consumer Creditor was made aware explicitly that the matter that required his objection by August 29, 2009 at 4:00 p.m. was being addressed at that hearing, he would have moved the court of a “Protective Order” since he was not given enough time to respond and analyze the objection.

-----Original Message-----

From: Carickhoff, David <CARICKHOFF@BlankRome.com>

To: hdmhos@aol.com

Cc: Sloan, Elizabeth <Sloan@BlankRome.com>; Carickhoff, David <CARICKHOFF@BlankRome.com>

Sent: Wed, Sep 2, 2009 4:04 pm

Subject: New Century -- District Court Order re: Motion to Dismiss

Pierre,

Attached please find the Order setting a briefing schedule from the District Court. Also, I wanted to confirm that there are no matters scheduled for hearing on Friday that concern you.

Regards,  
Dave

David W. Carickhoff | Blank Rome LLP  
Chase Manhattan Centre, 1201 Market Street, Suite 800 | Wilmington, DE 19801  
Phone: (302)425-6434 | Fax: (302)428-5127 | Email: [Carickhoff@BlankRome.com](mailto:Carickhoff@BlankRome.com)

#### **4. Fact #4 - Matters before the Court**

At previous hearing that Consumer Creditor has attended in Judge Carey's courtroom, Your honor made it clearly that he needed at least 5 days lead time and deferred the matter at a later date until he had time to read to make a decision. Likewise, Consumer Creditor only became aware of the Fedex Package with the objection filed by the Trust on August 18, 2009 just before 9:00 leading to his scheduled hearing. Consumer Creditor had no reasons to believe that this matter was being consolidated because not only the court itself required a 5 days lead time and in the Trust's motion itself, it required Consumer creditor to submit his objection by August 28, 2009 at 4 p.m..

#### **II. Emergency Motion To Preserve Right Of Appeal**

In order to preserve his right of appeal as outlined above, Consumer Creditor would like a clarification from the Court that his responses to the Trust Objections were considered as was directed by the Trust since He was not given ample time to review or to prepare. On September 4, 2009, Consumer Creditor received the Order from Judge Carey and has filed his Appeal along with this motion.

#### **III. Emergency Motion To Extend Discovery Deadline from 9-15-09 to 10-2-09**

Based on the email received from Attorney Carickhoff regarding his appeal at the Federal District Court, Consumer Creditor never received any communication from the Court regarding

his appeal matter until September 4, 2009 (today). Thus, Consumer Creditor will be filing an Emergency motion to respond to the motion to dismiss the appeal by the Trust in the Federal District Court of Delaware and will need more time to conduct legal research and will be asking that Court if Consumer Creditor can submit his responses by September 21, 2009. Thus, Consumer Creditor is requesting an Order extending his response to discovery of tabulation of punitive damages by October 2, 2009.

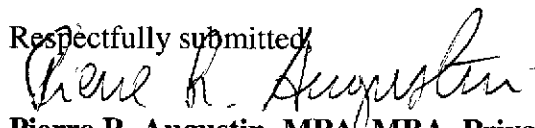
#### **IV. Emergency Motion and Declaration for Leave to Proceed in IFP Status**

Consumer Creditor hereby requests the authorization to Proceed in IFP status. Consumer Creditor has submitted a revised financial statement to support this request to proceed in IFP status. Based on the revised financial statement submitted to this Court, the Supreme Court of the United States has granted him IFP status for filing a Writ of Certiorari.

#### **V. EMERGENCY MOTION FOR STAY OF DISCOVERY MATTERS**

Consumer Creditor, Pierre-Richard Augustin, hereby request a stay on discovery matters pending the outcome of an emergency writ to the higher Courts since the ruling on AUGUST 31, 2009 is MATERIAL and determinative of the outcome of Consumer Creditor's case.

Respectfully submitted,



**Pierre R. Augustin, MPA, MBA, Private Attorney General, Ex Rel**  
Consumer Creditor, 3941 Persimmon Drive, #102  
Fairfax, VA 22031 | 617.202.8069 | 703.584.5998

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of this Motion was served via email and mailed to the court.

Pierre R. Augustin  
Pierre R. Augustin, Private Attorney General, Ex Rel, 3941 Persimmon Drive, #102  
Fairfax, VA 22031, Tel: 617-202-8069

**VERIFICATION**

I, Pierre R. Augustin, hereby depose and state as follows:

1. I am Pierre R. Augustin, represented by self.
2. I have read the foregoing responses filed herein and knowing the contents thereof have found that the allegations of fact set forth therein are true of my own personal knowledge, except as to those allegations based on information and belief which I believe to be true.

Signed under the penalties of perjury this 4 day of September 2009.

X Pierre R. Augustin

STATE OF Virginia COUNTY OF Fairfax

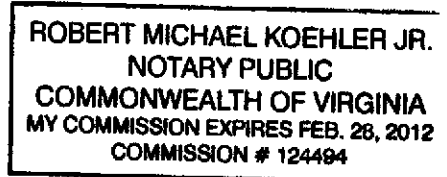
On this 4 day of September, 2009, before me, the undersigned notary public, personally appeared Pierre R. Augustin, proved to me through satisfactory evidence of identification, which was Virginia Drivers License, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that s/he signed it voluntarily for its stated purpose.

[Signature]

Notary Public

My Commission Expires:

(SEAL)





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FOR THE DISTRICT OF DELAWARE

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Consumer Creditor )

V. )

IN RE NEW CENTURY TRS HOLDING )  
IN RE NEW CENTURY LIQUIDATING TRUSTEE )  
Debtor )

No. 07-10416

AFFIDAVIT / AFFIRMATION

I, Pierre-Richard Augustin, affirm the following under penalty of perjury, being duly sworn,  
deposes and says: *Consumer Creditor*

- 1) I am the ~~Debtor~~ in this action, and I respectfully submit this affidavit/affirmation.
- 2) I have personal knowledge of facts which bear on this Motion.

I declare under penalty of perjury that the foregoing is true and correct, except as to those  
allegations based on information and belief which I believe to be true.

Dated: 9-4-09 Pierre R. Augustin  
Pierre-Richard Augustin, Private Attorney General, Ex Rel  
3941 Persimmon Drive, #102, Fairfax, VA 22031 (617) 202-8069

STATE OF Virginia COUNTY OF Fairfax  
On this 4 day of September, 2009, before me, the undersigned notary public, personally  
appeared Pierre Richard Augustin, proved to me through satisfactory evidence of  
identification, which was Virginia Drivers License, to be the person whose  
name is signed on the preceding or attached document, and acknowledged to me that s/he signed  
it voluntarily for its stated purpose.

[Signature]  
Notary Public  
My Commission Expires:  
(SEAL)

ROBERT MICHAEL KOEHLER JR.  
NOTARY PUBLIC  
COMMONWEALTH OF VIRGINIA  
MY COMMISSION EXPIRES FEB. 28, 2012  
COMMISSION # 124494

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1000

**FedEx** **US Airbill**

Tracking Number

8639 3194 9727

Express

RECIPIENT: PEEL HERE

1 From This portion can be removed for Recipient's records.

863931949727

Date 9/19/09 FedEx Tracking Number

Sender's Name MAILROOM 7th Floor Phone 302 425-6400

Company BLANK ROME

Address 1201 N MARKET ST STE 800 Dept./Room/Section

City WILMINGTON State DE ZIP 19801-1807

2 Your Internal Billing Reference 130576-0600

3 To Recipient's Name Petre Auguste Phone

Company

Recipient's Address 39411 Pennsylvania Ave Dept./Room/Section #102

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City Fairfax State VA ZIP 22031



8639 3194 9727

0871437329

4a Express Paid

☒ FedEx Priority C

☐ FedEx 2Day

4b Express Freight Service

☐ FedEx 1Day Freight\*

5 Packaging

6 Special Handling

7 Payment Bill to:

☐ No ☐ Yes

8 Residential Delivery Signature Options

Total Packages

Total Weight

12

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